United Nations AT/DEC/1119

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1119

Case No. 1230: AL-ZEIN

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Jacqueline Scott;

Whereas, on 10 May 2000, Hanan Al-Zein, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 14 July 2001, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal to order:

"1. Compensation for the remainder of [her] working service with the Agency which were twelve years ...

2. Compensation for two years;

3. Compensation for ... psychological injury

..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2002 and once thereafter until 31 May 2002;

Whereas the Respondent filed his Answer on 12 May 2002;

Whereas the facts in the case are as follows:

The Applicant joined UNRWA on a temporary indefinite appointment as an Area Staff member in the capacity of Staff Nurse (Relieving) Grade 07, Jordan, effective 18 October 1979. On 1 March 1984, the Applicant was promoted to the post of Area Nursing Officer, Grade 09, and effective 1 June 1984 she was promoted to Grade 10.

On 12 May 1999, the Applicant wrote to the Field Personnel Officer, Jordan, referring to a meeting which had taken place on 6 May with the Chief, Field Health Programme, Jordan. During this meeting, she had apparently been informed that, due to a restructuring of the Department of Health, three Grade 10 Area Nursing Officer posts (including the Applicant's post) were to be deleted from the staffing table: all three staff members were offered posts of Senior Staff Nurse, Grade 9, with salary and grade protection. The Applicant declined the offer, and, in her letter expressed instead a wish to be "considered for education" and to be transferred to one of two vacant posts, that of School Supervisor for Health Education or Senior Vocational Training Instructor. On 17 May 1999, the Chief, Field Health Programme wrote to the Field Personnel Officer (FAO) and the Deputy Administration Officer (DUO), and requested that her post be declared redundant. In a hand-written note on that memorandum, dated 19 May, the FAO and the DUO requested the Director of UNRWA Operations to approve further examination of the Applicant's request and that she be declared provisionally redundant only if a transfer proved to be impossible. The Director of UNRWA Operations approved this request on 6 June. However, in a letter of the same date notified the Applicant that he had no alternative but to declare her "provisionally redundant". He added that efforts would be made to find her an alternative suitable post, however, if such efforts were not successful, the letter was to be considered a notice of termination under staff rule 109.9.

On 15 June 1999, the Deputy Director of UNRWA Operations offered the Applicant a transfer to the post of Staff Nurse, Grade 08 at the Amman New Camp Health Centre with salary and grade protection. In her reply of 30 June 1999, the Applicant pointed out that the proposed position would put her back in the position she had been in when she joined the Agency and under the supervision of

someone she had supervised herself for more than 15 years. Therefore, she asked to be considered for another post more suited to her qualifications and experience.

On 1 August 1999, the Applicant appealed to the Area Staff Joint Appeals Board (JAB).

In a letter dated 2 August 1999, the Deputy Director of UNRWA Operations offered the Applicant a transfer to the post of Senior Staff Nurse, Grade 09 at the Nuzha Health Centre with salary and grade protection. On 30 August, the Applicant advised the Director of UNRWA Operations that this offer of alternate employment, like the others, was not commensurate with her experience and qualifications. In his reply of 2 September, the Director of UNRWA Operations indicated that it was not clear whether or not the Applicant had accepted the offer; that "he had explored all possibilities to absorb [her] against a [suitable] post ... but [that] all efforts to satisfy [her] ambitions were unsuccessful"; and, that if she did not report for duty at the Nuzha Health Centre by 29 September, she would be terminated on redundancy grounds. Further efforts to find a suitable post for the Applicant were unsuccessful, and, following her failure to report for duty on 29 September, her appointment was terminated.

The JAB adopted its report on 6 February 2000. Its evaluation and judgement, and recommendation read, as follows:

> "**III. EVALUATION AND JUDGEMENT**
>
> 17. ...
>
> a) The Board noted that the decision to terminate the Appellant's [a]ppointment on redundancy basis was properly made in accordance with area staff rules and regulations.
>
> b) The Board ... established that the Appellant had a 20-year of long commendable service ...
>
> c) ... [T]he Board is of the [o]pinion that the Administration should have made a little effort so as not to lose such a good staff member.
>
> **IV. RECOMMENDATION**
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> ... [T]he Board unanimously makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed.
>
> However and for humanitarian reasons the Board is of the opinion that since the Appellant is a widow and supporting two children, to compensate her for her remaining five years with the Agency."

On 6 March 2000, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

> "...
>
> I ... disagree with the Board's finding that the Administration should have exercised more effort "*not to lose such a good staff member*". The Administration can only be expected to undertake reasonable efforts to find a staff member a suitable post. This it did, and in any event there were no other suitable posts which could have been offered to you. Accordingly, I have accepted the Board's recommendation that the Administration's decision appealed against should be upheld, and have dismissed your appeal."

On 14 July 2001, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Agency did not apply the criteria contained in paragraph 14.7 of Personnel Directive PD A/9/Rev.6/Amend.1 of 1 January 1999.

2. The Applicant was treated unfairly as the Agency did not make any effort to place her in a post in the Department of Education as she requested. Furthermore, it ignored her qualifications as an educator, and did not give her the chance to compete for suitable alternative posts during the redundancy period.

Whereas the Respondent's principal contentions are:

1. In the absence of any suitable vacant post, the Respondent had no option but to terminate the Applicant's appointment at the end of her period of provisional redundancy.

2. Had she accepted either of the proffered posts, the Applicant would have had priority for transfer to a post at her personal grade when a post for which she was qualified became vacant. Nonetheless, the Applicant chose to reject the offers of alternate employment.

3. Upon the termination of her appointment, the Applicant was paid a termination indemnity to compensate her for the loss of her employment, in accordance her entitlement prescribed by Area Staff Rule 109.9. Thus, the Applicant was compensated for "*her remaining five years with the Agency*".

The Tribunal, having deliberated from 11 to 24 July 2003, now pronounces the following Judgement:

I. On 6 May 1999, the Applicant who was an Area Nursing Officer, Grade 10, was informed that in furtherance of the proposed restructuring of the Department of Health, the three Area Nursing Officer, Grade 10 posts (including the Applicant's post) were to be deleted from the staffing table. Neither the legitimacy nor the *bona fides* of this decision is an issue in these proceedings.

II. Those three staff members (including the Applicant) were offered posts as Senior Staff Nurse, Grade 9, with salary and grade protection. Two of the Area Nursing Officers accepted these alternative posts, but the Applicant declined to do so. She asked that consideration be given to assigning her to a post in the Education Department and she identified two vacant posts: (i) School Supervisor for Health Education, and (ii) Senior Vocational Training Instructor at Amman Training Centre, and asked that consideration be given to appointing her to one or other of the posts.

III. As the Applicant had not accepted the post of Senior Staff Nurse, Grade 9, with salary and grade protection, the Chief, Field Health Programme, Jordan, requested that her post be declared provisionally redundant. Here again neither the legitimacy nor *bona fides* of these decisions have been challenged, save that the Applicant submits that, in relation to Senior Vocational Training Instructor the post, she had priority to be selected over the candidate who was ultimately appointed thereto. This issue is dealt with later on in this Judgment. What is in issue is whether having declared the Applicant to be provisionally redundant, the Agency fulfilled its obligation to take reasonable steps to provide her with a suitable alternative post and complied with its obligations as to the priority to be given to the Applicant in seeking to so accommodate her in such a position during the period of her provisional redundancy.

IV. By letter of 6 June 1999, the Director of UNRWA Operations, Jordan, declared the Applicant's post provisionally redundant. He advised her that the Agency would try to find the Applicant an alternative suitable post but that if those efforts proved unsuccessful she would be terminated on redundancy grounds effective close of business on 30 September 1999.

Paragraph 14 of Personnel Directive PD A/9/Rev.6/Amend.1 obliges the Administration during the period of provisional redundancy to look for suitable placement for a redundant staff member and provides that, if placement cannot be made to a suitable post, the staff member's appointment would be terminated and prescribes

that in that event, a termination indemnity be paid to such person. It defines "*a suitable post*" as being:

> "14.7.1 a post in the same or similar occupational group with the same grade and the same salary increments for which the staff member is qualified in most aspects: or
>
> 14.7.2 a post in a lower grade or with a lower salary or increments to which the staff member agrees to be transferred; or
>
> 14.7.3 any post which, in the opinion of the Commissioner General and having regard to all the circumstances, including the views of the staff member; is not to the disadvantage of the staff member."

The Administration did not offer to the Applicant *an alternative post in the same or similar occupational group with the same grade and with the same salary increments for which she was qualified in most aspects* but the record shows that this was because the Respondent did not have any such posts vacant during the relevant period and the Applicant does not allege that there was any such post vacant during the period nor does she identify such a post or allege that such post existed and that it was denied to her.

V. The Tribunal is satisfied that due consideration had been given to appointing the Applicant to the posts which had been identified by her in the Department of Education. It is satisfied that she was not offered an appointment to either such post, because in relation to the post of School Supervisor for Health Education, Grade 12, this post was filled by another redundant staff member with a personal Grade of 12 (whereas the Applicant's Grade was 10), and in relation to the position of Senior Technical Instructor (Para-Medical), Grade 12, the Applicant had neither the required professional nor teaching expertise stipulated in the Occupational Classification Manual, nor was her B.Sc. (Nursing) relevant to the Para-Medical courses to be taught at the Centre. Furthermore, neither said post would have amounted to "*a suitable post*" as defined by Personnel Directive A/9 vis-à-vis the Applicant as neither was of the same grade as the Applicant so that to have appointed her to either position would have constituted a substantive promotion. A promotion was not her entitlement under the provisions of the said Personnel Directive.

Moreover, to have transferred the Applicant to either post would also have been a transfer to another discipline which likewise was not her entitlement under the Personnel Directive.

VI. In her submission to the JAB the Applicant had contended that paragraph 14.2 of PD A/9 gave her priority over the successful candidate for the post of School Supervisor Health Education. The Tribunal rejects this submission as it is based on a misunderstanding of the appropriate provision. Paragraph 14.2 deals with the situation as to which of two or more staff members should be selected for redundancy, if they all occupy the same post and only one staff member is to be redeployed or separated. It provides for what is commonly referred to as the "*first in, last out principle*". It does not deal with the situation pertaining to the case where there are staff members from different posts competing for the same vacant post. In this case, the position was given to the person who already had held a Grade 12 position so that it was "*a suitable post*" under the Personnel Directive from the point of view of the successful candidate, whereas it would not have been from the point of view of the Applicant, given that her personal grade was Grade 10.

VII. On 15 June 1999, the Applicant was offered a transfer to the post of Staff Nurse, Grade 08, at Amman New Camp Health Centre, again with salary and grade protection, and advised that, if she accepted this offer, the provisional redundancy would be withdrawn. She again chose not to take up this offer and again sought consideration for an appointment which she believed would be more in keeping with her experience and qualifications.

By letter of 2 August 1999, the Applicant was offered a transfer to the post of Senior Staff Nurse, Grade 09, at "J/Nuzha MCH Centre" and again with salary and grade protection. She responded by advising that she considered that the Agency's offers of alternative employment were not suitable, having regard to her qualifications and experience. Neither offer could be considered as an offer of "*a suitable post*" as each was a transfer to a post in a lower grade and the Applicant had not agreed to be so transferred. It is arguable that these offers might have constituted the offer of a suitable post within the meaning of paragraph 14.7.3 of PD A/9, save that the views of the Respondent were neither sought nor given. It was never argued that the said offers or any of them were offers of a suitable post, so as to seek to deny the Applicant her separation entitlements.

VIII. In the opinion of the Tribunal, the nature and extent of the offers made to the Applicant show that there was a willingness on the part of the Agency to seek to accommodate the Applicant and it rejects any suggestion that there was anything in the nature of prejudice shown against her.

In relation to the offers made to the Applicant, they were made with salary and grade protection. Had she accepted either one, it would have ensured that she would have remained in the employment of the Agency and, once transferred, she would have enjoyed priority for transfer to *"a suitable post"* equal to her personal grade (Grade 10), once such post had become available, by reason of the provisions of paragraph 14.9 of the said Personnel Directive.

The Applicant had submitted to the JAB that she should have been retained in her post as Area Nursing Officer until she was absorbed in a suitable post. This suggestion is not only contrary to the provisions of paragraph 14 of PD A/9 but would be a waste of resources to allow a staff member to occupy a post which was no longer required. She would have enjoyed no right to such unusual treatment.

IX. The Tribunal is satisfied that the Applicant has failed to establish any breach of an entitlement under the provisions of Personnel Directive A/9 or otherwise. It is satisfied that she has failed to establish any impropriety on the part of the Administration or to establish any malice, prejudice or ulterior motivation in the way in which she was treated.

X. Accordingly, all claims are rejected.

(Signatures)

Kevin **Haugh**
Vice-President, presiding

Spyridon **Flogaitis**
Member

Jacqueline R. **Scott**
Member

Geneva, 24 July 2003

Maritza **Struyvenberg**
Executive Secretary

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